



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0223

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300 Use of Force. POL-1.3 Canine Deployments Will Be Limited to the Following Situations: Felony Crimes...	Not Sustained (Management Action)
# 2	8.300-POL-1 5. Off-Lead Canine Searches May be Suitable Under Certain Circumstances:	Not Sustained (Management Action)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee may have engaged in an out of policy K-9 deployment.

SUMMARY OF INVESTIGATION:

This case stems from a K-9 deployment that occurred on April 3, 2021. Named Employee #1 (NE#1) was the K-9 handler. During a later chain of command review, the Complainant – a lieutenant – identified that the deployment may have been inconsistent with policy or that it was the result of an unclear policy. The Complainant referred the incident to OPA, and this investigation ensued.

As part of its investigation, OPA reviewed the documents concerning the crime at issue that NE#1 responded to. Officer, including NE#1, were dispatched to an ongoing commercial burglary in the first degree. The call log was updated with the following information: "susp seen on earlier call has returned and is back inside the site." NE#1 and another K-9 handler arrived on scene and were briefed by patrol officers. They were informed that it was an ongoing commercial burglary and that two suspects were believed to be inside of a building that was under construction. The officers reiterated that it was a "felony burglary." The officers affirmed that they were not seeking the suspects for a "nonviolent felony." One of the officers said that one of the suspects was in possession of a fixed blade knife, which was believed to be in that suspect's backpack. Given this, NE#1 concluded that he was permitted to deploy his K-9 pursuant to policy in order to conduct a building search.

NE#1 told the officers how he planned to conduct the building search. He said that he would do so slowly, progressively from floor to floor, and with announcements. He explained that if the "guys are in there, we see 'em, we're going to do our best not to bite him. If we bite him, wait 'til I tell you to move up." He further stated: "If the guy, he is armed with that knife, if you see him start to stab the dog, can't shoot him for stabbing property but if he advances on us, it's a different story. So, just keep that in mind.'



The patrol officers were assigned roles and the building search commenced. Prior to entering the building and on each floor, NE#1 provided announcements and a K-9 warning. As the search progressed, NE#1 removed his K-9's lead and used the K-9 off-lead. As they entered the third floor and after another set of announcement and warnings were provided, a patrol officer said that she wanted to check out a room. The K-9 entered and identified a tarp in the corner of the room. The K-9 bit the tarp. Virtually immediately thereafter, the officers became aware that one of the suspects was under the tarp and had been the subject of the bite. NE#1 released his K-9 and officers took the individual into custody. He had a minor bite to his leg for which he received medical treatment.

OPA's investigation included reviewing the use of force investigations conducted by the K-9 unit chain of command and the Complainant. Both an acting sergeant and the unit lieutenant deemed the decision to conduct an off-lead building search and the K-9 deployment to be consistent with policy. However, the Complainant disagreed. He asserted that the patrol officers had insufficient evidence to establish probable cause that either of the suspects were involved in an ongoing burglary, rather than simply trespassing. He further opined that the force was inconsistent with policy. The unit captain also reviewed the force. He did not approve the force and concurred with the Complainant that there did not appear to be probable cause for burglary. He opined that the K-9 policy needed to be amended because of a lack of clarity concerning burglaries for which a K-9 could be deployed. He specifically stated the following: "I believe that the policy needs to be reviewed regarding K9 use of force for burglaries. The interpretations of this policy vary within the K9 unit, and within the chain-of-command. This is the only property crime listed for which a K9 may be deployed (8.300.3)."

OPA also interviewed the Complainant, NE#1, and two K-9 acting sergeants. The Complainant first asserted that he did not feel that there was probable cause for felony burglary. He did not think that the patrol officers accurately represented the facts to NE#1. While the Complainant felt that the K-9 search and a search off-lead was permissible, he had concerns with the ultimate bite. He did not feel that NE#1 had proper control of the K-9 at that point. He also felt that the bite was not necessary as additional steps could have been taken to search and clear the room prior to allowing the K-9 to deploy. The Complainant explained that, in his opinion, it was not appropriate for the locating to occur through the bite. Instead, the K-9 should be used to point out where the subject may be hiding so that the officers can attempt to take the subject into custody without the bite occurring. The Complainant raised concerns with the reference to "completed burglaries" within the new iteration of the policy. He said that there was confusion as to what this meant within the unit and based on the plain language within the policy and the lack of an explanation.

Both of the acting sergeants stated that, based on the information provided by patrol officers, there was probable cause to believe that a burglary was occurring. As such, both believed that a K-9 deployment was permissible under policy. Both acting sergeants also felt that it was appropriate to conduct the building search with the K-9 and to do so while the K-9 was off-lead. Lastly, both acting sergeants asserted that it was reasonable for NE#1 to allow the K-9 to enter a room first and determine whether there were any subjects present prior to officers following. One of the acting sergeants noted that the policy had since been amended to discuss completed burglaries. However, at the time, the policy did not require this as a prerequisite to deployment. The other acting sergeant discussed "walking the walls" when conducting a building search. He stated that this had not been a trained requirement for some time.

NE#1 similarly asserted his belief that there was probable cause to believe that a burglary was occurring. NE#1 also felt it possible that at least one of the subjects was armed given the information relayed to him by patrol. He stated that he had no reason to disbelieve what he was told. He contended that he was allowed under policy to conduct a K-9 search of a building such as the one here, as well as that it was permissible for him to perform the search with his K-9 off-lead. NE#1 also raised "completed burglaries" and stated that this was not the policy requirement at the time of



this incident. NE#1, like the acting sergeant, said that they were not required to engage in “walking the walls” during the search. NE#1 was frustrated that this complaint was filed as he believed that he did everything right and because, immediately after the incident, the deployment was supported by his chain of command.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

8.300 Use of Force. POL-1.3 Canine Deployments Will Be Limited to the Following Situations: Felony Crimes...

SPD Policy 8.300-POL-1(3) sets forth the crimes for which a K-9 may be deployed. At the time of this incident, the policy allowed for deployment for a burglary “not including trespass with non-violent secondary crime.” However, the policy was later amended to only allow a deployment for a “completed burglary.”

As a starting point, OPA notes that it, like members of the K-9 chain of command, has concerns with how the patrol officers presented the facts of the incident to NE#1. OPA is not sure that there was actually probable cause to believe that a felony burglary was ongoing or, for that matter, that the subject was armed. However, NE#1 was allowed to rely on the information that he was provided and, as such, OPA concludes that he had probable cause to believe that a burglary was occurring. Given this, OPA finds that his decision to deploy his K-9 to conduct a building search was permissible.

OPA further agrees with the K-9 chain of command that the addition of the term “completed” to modify burglary in the policy is confusing. OPA concurs that the lack of a definition/explanation for this term within the policy is problematic and should be corrected. As such, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** SPD should modify the K-9 policy to either eliminate “completed” or to provide additional guidance as to what this term means. The Department should ensure that the K-9 unit is on the same page with regard to this issue.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 – Allegation #2

8.300-POL-1 5. Off-Lead Canine Searches May be Suitable Under Certain Circumstances:

SPD Policy 8.300-POL-1(5) instructs on when off-lead K-9 searches are permissible. Here, the Complainant’s concern is less with NE#1’s decision to engage in an off-lead search than with his belief that the search, itself, was not conducted correctly and that this led to an unnecessary bite. Indeed, the Complainant stated that going off-lead was permissible under policy.

OPA agrees that an off-lead search was within policy once NE#1 had probable cause to believe that there was an ongoing felony burglary within a commercial building.

With regard to the way the search was conducted, the Complainant raised that the preferred technique would be to have the K-9 provide notice that the subject was likely within the room and then to have officers clear the room, rather than having the K-9 enter the room and effectuate the bite. However, NE#1 and both of the acting sergeants asserted that the manner in which NE#1 conducted the search here was consistent with current training and practice of the K-



9 unit and was, thus, permissible. Given this dispute between members of the same unit, OPA believes that the K-9 chain of command should assess how it wants such searches to be conducted, reach a consensus within the unit, and ensure that all unit employees receive appropriate training.

- **Management Action Recommendation:** As noted above, the K-9 unit should assess how it would like building searches and, particularly, off-lead searches to be conducted. The unit should reach a consensus, getting feedback from supervisors and handlers, and ensure that all unit employees receive training.

Recommended Finding: **Not Sustained (Management Action)**